

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2013071141

ORDER DENYING STUDENT'S
PEREMPTORY CHALLENGE

On November 18, 2013, LaJoyce L. Porter, attorney for Student, filed a notice of peremptory challenge to Administrative Law Judge (ALJ) Charles Marson in the above captioned matter. Student's peremptory challenge is made pursuant to Government Code section 11425.40, subdivision (d), of the Administrative Procedures Act (APA), and California Code of Regulations, title 1, section 1034.

Government Code section 11425.40, subdivision (d), establishes the criteria for disqualification of the presiding officer. A party is entitled to one peremptory challenge (disqualification without cause) to an ALJ assigned to an Office of Administrative Hearings (OAH) hearing. (Cal. Code Regs., tit. 1, § 1034, subds. (a) & (b); Gov. Code, § 11425.40, subd. (d).) In no event will a peremptory challenge be allowed if it is made after the hearing has commenced. In addition, if at the time of a scheduled prehearing conference, an ALJ has been assigned to the Hearing, any challenge to the assigned ALJ shall be made no later than commencement of that prehearing conference. (Cal. Code Regs., tit. 1, § 1034, subd. (c).) A peremptory challenge is not allowed on reconsideration or remand, and cannot be made after a hearing has begun. (Cal. Code Regs., tit. 1, § 1034, subd. (a).)

Specific to this matter, when a due process hearing is held at a site other than an Office of Administrative Hearings office, the peremptory challenge must be made no later than noon on the Friday prior to the week in which the hearing is to commence. (Cal. Code Regs., tit. 1, § 1034, subds. (e).) In this matter, Student's counsel was notified on November 14, 2013, that the matter had been reassigned to ALJ Marson. On November 15, 2013, Student's counsel confirmed that the hearing was proceeding, but did not file a peremptory challenge.

November 15, 2013, was the Friday before the commencement of this hearing. Accordingly, Student's challenge is not timely and is denied.

IT IS SO ORDERED.

Dated: November 18, 2013

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings